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ABSTRACT

Constitutional guarantees, as provided by the Bill of Rights, are enjoyed by all citizens. This principle applies no less to students with respect to their college or university domicile. Case law on this subject suggests that three questions must be answered to determine the reasonableness of residence searching: (1) by whom the search is conducted; (2) the specific reasonable cause precipitating a search; and (3) the circumstances under which evidence of unlawful activity is found. Careful and thoughtful consideration of the basic principles of search and seizure can help in avoiding legal difficulties and infringement of student rights. (Author/KA)

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TO SEARCH OR NOT TO SEARCH!

J. Rodney Taylor

Constitutional guarantees, as provided in the Bill of Rights, are enjoyed by all citizens of the Republic. This principle applies no less to students with respect to their college or university domicile. The New York Supreme Court declared, "It is true that a student does not lose his constitutional rights at the school house door or at the entrance to the college campus."[1] Such constitutional rights against improper or unauthorized search and seizure are guaranteed by the Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure, shall not be violated. and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.[2]

Students may be considered to be protected, then, by the Constitution against unreasonable search and seizure just as any other citizen. However, Fourth Amendment guarantees do not prohibit college officials from conducting searches of dormitory rooms if there is reasonable cause to believe that a student is utilizing the room for unlawful or criminal activities which would interfere with the "institution's fundamental duty to operate the school as an educational institution."[3]

From a study of the case law on this subject, three principal conditions appear to be fundamental to the lawful (especially

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with respect to a warrantless search) search of a college or university dormitory room. The first condition relates to those conducting the search. The federal district court of Alabama, in handing down its landmark decision in a search and seizure case,[4] quoted from a preceding (and lesser known) case[5] when it determined that college officials possessed a "reasonable right of inspection necessary to the institution's performance of its duty as an educational institution." The court reasoned that a student enters upon a "special relationship with the college" when he enrolls. And though no rules and regulations must be established which might interfere with his Fourth Amendment rights, nevertheless, the institution, through its officials, may conduct a search, if reasonable cause for such a search can be substantiated. The court recognized the necessity of maintaining campus discipline and reasoned that a student who interferes with the effectiveness of that discipline must yield his rights to the performance of the institution's duty.

The authority to conduct a reasonable search to maintain such campus discipline or "duty as an educational institution" may not, however, be transferred to civil authorities. The courts have ruled thusly, for example, in a case in which a search was conducted by state narcotics agents, city police, university security officers, and the resident counselor.[6] For herein the court declared that a

warrantless and consentless search by police is not necessary to the maintenance of academic decorum. In its decision, the court stated that "a student who occupies a college dormitory room enjoys the protection of the Fourth Amendment." As such, no warrantless search for evidence for use in a criminal prosecution case is legal.[7] This non-transferability of search authority has continued to be upheld. As late as 1974, the Supreme Court of Ohio ruled that police officers may not enter a dormitory room and conduct a search without a valid search warrant.[8]

We would conclude, then, that searches by college and university officials, based upon substantiated probable cause, generally do not violate the constitutional rights of students. However, the Fourth Amendment does protect students against warrantless searches by police or other civil authorities.

The second fundamental consideration is the specific reasonable cause which precipitates a search. A probable cause or reasonable form of evidence must exist to warrant a search. In one such case, which might serve to illustrate the point, a student locker was searched as a result of a noxious odor emanating from it.[9] Upon search, a briefcase containing a cache of marijuana was found. The court ruled that a "compelling urgency" was exhibited, since complaints about the odor had been received by the college administration.

In its decision, the court stated that, having "reasonable control of the briefcase under the emergency doctrine, it was equally reasonable for university officials to open it and determine the precise cause of the smell."

Courts have also declared searches as reasonable when they are conducted for the purpose of maintaining proper standards of conduct and discipline. In 1969, the suitcase of an incoming corpsman was searched as a part of the routine check of all entering recruits.[10] The court declared that the search was within the rightful constitutional exercise of the institution to maintain proper standards of conduct and discipline.[11]

A third consideration is the special circumstance under which a warrantless search might be conducted. Courts have declared, for example, that the "plain view" doctrine is valid and constitutional. A classical case occurred in 1970,[12] when a suspicious-looking van had been stopped for a traffic violation. In the course of writing the citation, the officer noticed a supply of contraband leaflets protruding from beneath a seat. The driver subsequently was arrested. The court upheld the defendants in this case[13] stating, "It has long been settled that objects falling in the plain view of an officer . . . are subject to seizure and may be introduced into evidence."

In a circumstance involving a routine inspection of a dormitory room, a supply of marijuana and paraphernalia were found on the top of a desk.[14] Although this case exemplifies further the constitutionality of the "plain view" doctrine, the court also upheld the defendants on the right of inspection. University regulations declared that a monthly inspection was to be conducted for the purpose of maintaining cleanliness and safety and to determine the need for repairs and maintenance.[15] And the court ruled that inspections of this nature are the right of the institution in maintaining itself as an educational institution.

The same fundamental principles regarding search and seizure hold true for private as well as public institutions.[16] Warrantless searches by college officials, based upon substantive reasonable cause, with or without the consent of the student, do not infringe on the Fourth Amendment rights of students.[17]

In determining the reasonableness of a search, the answers to three basic questions appear to be fundamental: (1) By whom is the search conducted? (2) What specific reasonable cause precipitates a search? (3) Under what circumstances is evidence of unlawful activity found? While specific situations may provide additional legal considerations, these three questions appear to be the fundamental determining factors.

Although mitigating or unusual circumstances might exist for a specific situation, college and university administrators should be keenly aware of the need to respect the constitutional rights of their students. As a Michigan district court stated, "the plaintiff's dormitory room is his house and home for all practical purposes, and he has the same interest in the privacy of his room as any adult has in the privacy of his house, dwelling, or lodging."[18] Careful and thoughtful consideration of the basic principles of search and seizure can help in avoiding legal difficulties and infringement of student rights when conducting warrantless searches.

Footnotes

[1]In the case of People v. Boettner and Gottshall, 362 N. Y. S. 2d 365 (1974).

[2]The Constitution of the United States.

[3]Quoted from Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725 (1968).

[4]Ibid.

[5]The case referred to here is Englehart v. Serena, 318 Mo. 263, 300 S. W. 268 (1927), which became the early landmark case relating to this subject. Moore v. Student Affairs Committee is important because it reaffirmed the Englehart decision and is currently looked upon as the precedent-setting case for this era.

[6]Piazzola v. Watkins, 442 F. 2d 284 (1971).

[7]Other cases such as People v. Cohen, 292 N. Y. S. 706 (1968) have dealt with the matter of warrantless searches of dormitory rooms and the seizure of evidence not incident to an arrest. Most notable among these cases is People v. Lanthier, 97 Cal. Rpts. 297 (1971), in which a warrantless search was conducted as a result of an obnoxious odor emanating from a library carrel. The court ruled that warrantless searches of this nature were permissible under emergency circumstances. Further, in Morale v. Grigel, 422 F. Supp. 988 (1976), the court ruled that a warrantless search by univer-

sity officials and evidence seized therein were permissible. Also evidence seized could be admitted in disciplinary proceedings on campus but could not be admitted in any civil or criminal proceedings.

[8]City of Athens v. Wolf, 313 N. E. 2d 405 (1974).

[9]People v. Lanthier, 97 Cal. Rpts. 297 (1971).

[10]United States v. Coles, 302 F. Supp. 99 (1969).

[11]A similar case was Keene v. Rodgers, 316 F. Supp. 217 (1970) at the Maine Maritime Academy. And the most recent case of this nature is Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (1976) in which the court declared, "the search was in substance a search by state authorities, and they had ample evidence to support the search . . . The search was based on probable cause . . . and federal status of the place to be searched excused the police from seeking a warrant."

[12]Speake v. Grantham, 317 F. Supp. 1253 (1970).

[13]Another "plain view" case which is applicable here is State v. Kappes, 550 P. 2d 121 (1976). Refer also to People v. Lanthier, 97 Cal. Rpts. 297 (1971).

[14]State v. Kappes, 550 P. 2d 121 (1976).

[15]Regulations by an institution cannot be used to violate the Fourth Amendment rights of a student. As in the case of Smyth v. Smith, unreported (1975), students were required to sign a housing

contract, agreeing to abide by the rules and regulations of the college. The court declared that the "state cannot condition attendance . . . on a waiver of constitutional rights." However, in People v. Overton, 20 N. Y. 2d 360 (1967), the court stated that the reasonable right of the institution to inspect is necessary to the performance of its duty as an educational institution even though such a right may infringe upon the "outer boundaries of a dormitory student's Fourth Amendment rights."

[16]Other circumstances with respect to the status of the institution may exist. For example, the authority of the state and federal institutions is treated differently, as in the case of Ekelund v. Secretary of Commerce, 418 F. Supp. 102 (1976) and Keene v. Rodgers, 316 F. Supp. 217 (1970).

[17]Refer to State v. Wingerd, 318 N. E. 2d 866 (1974) and People v. Boettner and Gottshall, 362 N. Y. S. 2d 365 (1974). This latter case is a well-written opinion which clearly distinguishes between government action (public institutions) and private conduct.

[18]Smyth v. Smith, unreported (1975).